

DEPARTMENT OF TRANSPORTATION  
FEDERAL RAILROAD ADMINISTRATION

**Grant Agreement – Attachment 1**  
**STANDARD TERMS AND CONDITIONS**

January 2015

## SECTION I. ATTACHMENT OVERVIEW AND DEFINITIONS

This attachment is part of a Grant<sup>1</sup> Agreement package and contains the standard terms and conditions (henceforth referred to as “conditions”) governing the execution of the Project and the administration of this Grant. The Agreement includes the cover sheet and all of the attachments. By entering into this Agreement with the Federal Railroad Administration (FRA), the Grantee, as identified on this Agreement cover sheet, agrees to comply with these conditions and all applicable Federal laws and regulations, including those outlined in Section IV of this document. Terms that appear frequently throughout the Agreement are defined below:

- a. **Agreement** means this Grant Agreement, including all attachments.
- b. **Application** means the signed and dated application submitted by or on behalf of the Grantee, as may be amended, seeking Federal financial assistance for the Project, together with all explanatory, supporting, and supplementary documents, assurances and certifications filed with and accepted or approved by FRA.
- c. **Approved Project Budget** means the most recently dated written statement, approved in writing by FRA, of the estimated total cost of the Project. The term "Approved Project Budget" also includes "Financial Plan" as used in 2 C.F.R. § 200.308.
- d. **Authorized Representative** means the person(s) at FRA or the Grantee who is able and approved to communicate on behalf of the organization, perform the referenced action, or commit the organization to the referenced action, per the organization’s internal policies, procedures, or reporting structure, except actions otherwise provided for in this Agreement, such as amendments to the terms and conditions of the Agreement.
- e. **DOT** means the United States Department of Transportation, including its operating administrations.
- f. **Federal Government** means the United States of America and any executive department or agency thereof.
- g. **Federal Railroad Administration or FRA** is an operating administration of the DOT and the Federal Awarding Agency for this Agreement.
- h. **Grantee** means the entity that receives Federal grant assistance directly from FRA for the accomplishment of the Project referenced in this Agreement. Also referred to as the Recipient in 2 C.F.R. Part 200.
- i. **Project** means the task or set of tasks set forth in the approved Application which the Grantee carries out pursuant to this Agreement, as set forth in the Statement of Work, included in this Agreement as Attachment 2.

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<sup>1</sup> The term “grant” is used throughout this document and is intended to reference funding awarded through a traditional Grant Agreement, as well as funding awarded to recipients through a Cooperative Agreement.

- j. **Statement of Work.** An attachment to this Agreement containing a detailed description of the work the Grantee will complete with awarded grant funding, and including key dates, milestones, and the deliverables required to demonstrate progress toward Project completion.

Additional definitions are found in 2 C.F.R. Subpart A, and these Subpart A definitions are incorporated herein by reference and made a part hereof.

## **SECTION II. GENERAL CONDITIONS**

### **1. Grant Agreement:**

This Agreement constitutes the entire agreement between the parties. All prior discussions and understandings concerning such scope and subject matter are superseded by this Agreement. This Agreement is also governed by and subject to 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, and DOTs implementing regulations at 2 C.F.R. Part 1201.

### **2. FRA Role:**

This Agreement is entered into between FRA and the Grantee. FRA has primary responsibility for the administration of this Agreement, including funding disbursement to the Grantee, per the conditions contained in this Agreement. FRA will also conduct oversight and monitoring activities to assess Grantee progress against established performance goals and the Statement of Work, as well as to assess compliance with conditions and other requirements.

If this award is made as a Cooperative Agreement, FRA will have substantial programmatic involvement. Substantial involvement means that, after award, technical, administrative, or programmatic staff will assist, guide, coordinate, or otherwise participate with the Grantee in Project activities.

FRA will provide professional staff to review work in progress, completed products, and to provide or facilitate access to technical assistance when it is available, feasible, and appropriate. At a minimum, FRA will assign a Financial Analyst and a Grant Manager:

- a. Financial Analyst. At the time of award, FRA will provide the name and contact information for the Financial Analyst dedicated to this Agreement. The Financial Analyst will serve as the Grantee's point of contact for systems (e.g., Grant Solutions and the Delphi Invoicing System) access and troubleshooting as well as for financial monitoring. The Financial Analyst is not authorized to unilaterally change the Statement of Work, make any changes which affect this Agreement's monetary amount, the delivery schedule, Project Performance Period or other terms or conditions.
- b. Grant Manager. At the time of award, FRA will provide the name and contact information for the Grant Manager dedicated to this Agreement. The Grant Manager will serve as the Grantee's point of contact for grant administration and will oversee compliance with the terms and conditions in this Agreement. The Grant Manager reviews financial reports, performance reports, and works with the Regional Manager to facilitate effective Project delivery. The Grant Manager is not authorized to unilaterally change the Statement of Work, make any changes which affect this Agreement's monetary amount, Project Performance Period, or other terms and conditions.

- c. **Regional Manager.** At the time of award, if applicable, FRA will provide the name and contact information for the Regional Manager dedicated to this Agreement. The Regional Manager will be the Grantee's point of contact for the technical aspects of project delivery. The Regional Manager coordinates project deliverable review, evaluates grantee technical assistance needs, and generally assesses Project progress and performance. The Regional Manager is not authorized to unilaterally change the Statement of Work, make any changes which affect this Agreement's monetary amount, Project Performance Period, or other terms and conditions.
- d. **Contact Information.** FRA strongly prefers electronic submission of most documents (instructions for electronic submission are included under various requirements outlined in the conditions of this attachment). If the Grantee must mail documentation, that documentation should be delivered to the Grant Manager at:

Federal Railroad Administration  
Office of Railroad Policy and Development  
1200 New Jersey, SE  
Washington, DC 20590  
ATTN: (ASSIGNED GRANT MANAGER)

### **3. Grantee Responsibility and Authority:**

The Grantee affirms that it has the legal authority to apply for the Grant, to enter into this Agreement, and to finance and carry out the proposed Project identified in its Application, and that any required resolution, motion or similar action has been duly adopted or passed as an official act authorizing the filing of the application, including all understandings and assurances contained therein, and the entering into of this Agreement. The Grantee will not take or permit any action that would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this Agreement without the written approval of the FRA, and will act promptly to acquire, extinguish, or modify any outstanding rights or claims of right of others that would interfere with such performance by the Grantee. The Grantee agrees that this will be done in a manner acceptable to the FRA.

### **4. Project Scope, Schedule, and Budget:**

The Grantee agrees to carry out and complete the Project in a sound, economical, and efficient manner, and in accordance with the provisions of this Agreement, grant guidance, the Application, the Approved Project Budget, the Statement of Work, Project schedules, and all applicable laws, regulations, and published policies.

- a. **Scope.** The Grantee shall furnish all personnel, facilities, equipment, and other materials and services, except as otherwise specified herein, that are necessary to complete the approved Project (as identified on the Agreement cover sheet and as set forth in the Statement of Work), in accordance with the representations, certifications

and assurances set forth in the Grantee's Applications(s), and any amendments thereto, incorporated herein by reference and made a part hereof.

- b. **Schedule.** The Grantee shall complete this Project, as documented in the Statement of Work, within the Project and funding period specified on the Agreement cover sheet. Unless sooner terminated in accordance with its terms, this Agreement shall be valid for the period described on the Agreement cover sheet. This time frame includes the period for both completion of the Project, and completion and submission of a final report on Project results, as described in these conditions and/or other deliverables as agreed to between the parties.
- c. **Budget.** The Grantee shall complete the Project within the funding limits and parameters specified on the Agreement cover sheet and the Statement of Work.
  - 1) **Project Costs and Funding Contributions.** The total estimated Project cost, the FRA funding contribution, and the Grantee matching funds contribution toward this Project are documented in sections 9, 10 and 11 of the Agreement cover sheet and may not be changed without a written request and justification from the Grantee, written approval from FRA, and an amendment to the Agreement. FRA will fund the Project at the lesser of the Federal amount documented in sections 9 through 11 of the Agreement cover sheet or the FRA percentage of total Project cost, as reflected in sections 9 through 11 and specifically identified in the Statement of Work.
  - 2) The Grantee is responsible for completing the Project, including providing the Grantee funding match, if any, as identified in sections 9 through 11 of the Agreement cover sheet, and any other funds necessary for completing the Project. The Grantee affirms that it has sufficient funds available for that portion of the Project costs that are not paid by the Government. The Grantee also affirms that it has sufficient funds available to assure operation and maintenance of items funded under this Agreement that it will own or control.
  - 3) **Project Budget Detail.** The Grantee agrees to carry out the Project according to the Approved Project Budget included in the Statement of Work for this Agreement. The Grantee agrees to obtain the prior written approval from FRA for any revisions to this Approved Project Budget that equal or cumulatively exceed 10 percent of any budget line item (or pertain to a cost category involving contingency or miscellaneous costs), or amount to a reallocation of 10 percent or more of the total Approved Project Budget across cost categories.
- d. **Pre-agreement Costs.** If FRA approves pre-agreement costs, as indicated in the Statement of Work, the Grantee may seek reimbursement for these costs on or after the start of the project performance period specified on the Agreement cover sheet. Such costs are allowable for reimbursement only to the extent that they are otherwise allowable under the terms of this Agreement, and are consistent with 2 C.F.R. § 200.458.

- e. Funds of the Grantee. Unless approved otherwise by FRA, the Grantee shall complete all actions necessary to provide the proportional, required matching contributory funds or cost share of the Project costs, if applicable, at or before the time that such funds are needed to meet Project expenses.

## **5. Grant Amendments:**

Modifications to this Agreement may be made only in writing, signed by an Authorized Representative for FRA and the Grantee, and specifically referred to as an amendment to this Agreement.

## **6. Flow Down Provisions:**

The Grantee shall include provisions to carry out the purposes of this Agreement in all subrecipient and contractual agreements with persons or entities that perform any part of the work under this Agreement. There shall be provisions for a further flow down of such requirements to each subsequent subrecipient, as required.

## **7. Successors and Assigns:**

The Grantee is not authorized to assign this Agreement without FRA's express prior written consent.

## **8. Execution:**

This Agreement may be executed by the parties in several individual identical copies, each of which shall be deemed an original.

## **9. Changed Conditions of Performance (Including Litigation):**

The Grantee agrees to immediately notify FRA, in a written statement to the FRA Grant Manager, of any change in local law, conditions, or any other event that may affect its ability to perform the Project in accordance with the terms of this Agreement. In addition, the Grantee agrees to immediately notify the FRA Grant Manager of any decision pertaining to the Grantee's conduct of litigation that may affect FRA's interests in the Project or FRA's administration or enforcement of applicable Federal laws or regulations. Before the Grantee may name FRA as a party to litigation for any reason, the Grantee agrees first to inform FRA Grant Manager in writing; this proviso applies to any type of litigation whatsoever, in any forum.

## **10. No FRA Obligations to Third Parties:**

Absent FRA's express written consent, and notwithstanding any concurrence by FRA in, or approval of, the award of any subaward, contract of the Grantee, subcontract of the Grantee, or the solicitation thereof, FRA shall not be subject to any obligations or liabilities to subrecipients, contractors or subcontractors or any other person not a party to this Agreement in connection with the performance of the Project.

## **11. Severability:**

If any provision of this Agreement is held invalid, all remaining provisions of this Agreement shall continue in full force and effect to the extent not inconsistent with such holding.

## **12. Right of FRA to Terminate:**

The Grantee agrees that, upon written notice, FRA may suspend or terminate all or part of the financial assistance provided herein if the Grantee fails to meet the conditions and obligations specified under this Agreement, violates the terms of this Agreement, or if FRA determines that the purposes of the statute under which the Project is authorized or funded would not be adequately served by continuation of Federal financial assistance for the Project. Any failure to make reasonable progress on the Project or other violation of this Agreement that significantly endangers substantial performance of the Project shall provide sufficient grounds for FRA to terminate this Agreement.

In general, termination of any financial assistance under this Agreement will not invalidate obligations properly incurred by the Grantee and concurred in by FRA before the termination date; to the extent those obligations cannot be canceled. However, if FRA determines that the Grantee has willfully misused Federal assistance funds by failing to make adequate progress, failing to make reasonable use of the Project property, facilities, or equipment, or failing to adhere to the terms of this Agreement, FRA reserves the right to require the Grantee to refund the entire amount of FRA funds provided under this Agreement or any lesser amount as may be determined by FRA in its sole discretion.

Expiration of any Project time period established for this Project does not, by itself, constitute an expiration or termination of this Agreement.

## **SECTION III. GRANT MANAGEMENT CONDITIONS**

### ***Performance and Reporting Provisions***

#### **13. Deliverables and Products:**

The Grantee shall submit deliverables, including publications or other products, to FRA as stipulated in this Agreement. Substantive changes to the nature of the deliverables or significant timeline modifications require advanced written approval and may require an Amendment to this Agreement.

The Grantee shall submit deliverables that adhere to all applicable laws, regulations, and FRA guidance within the timeframes established. In some instances, as articulated in the Statement of Work, the Grantee may be required to submit and obtain approval from FRA prior to continuing all or a portion of the work on the Project. Accordingly, the Grantee must account for FRA deliverable review time when planning work or submissions.

Whether for technical examination, administrative review, publication, or approval, all deliverable submissions shall be of a professional quality and suitable for their intended purpose.

#### **14. Quarterly Progress Reports:**

The Grantee shall submit one completed progress report quarterly (totaling four annually), in the form/format provided by FRA at <http://www.fra.dot.gov/Page/P0274>. The Grantee must report for the periods of: January 1 – March 31, April 1 – June 30, July 1 – September 30, and October 1 – December 31, for the duration of Project performance period. The Grantee shall furnish one copy of the completed progress report to the assigned FRA Grant Manager on or before the thirtieth (30<sup>th</sup>) calendar day of the month following the end of the quarter for which the report is submitted.

The Grantee must complete the report in its entirety with the most accurate information available at the time of reporting. The Grantee must be able to support the information contained in its progress reports and ensure that the activities described in the report are commensurate with reimbursement requests and/or outlay figures reported for the quarter.

#### **15. Quarterly Federal Financial Reports:**

The Grantee shall submit the Federal Financial Report (Standard Form 425) on the same schedule as the required progress report (listed above). Reports should be submitted online through GrantSolutions. Reports shall be submitted in accordance with the form's instructions, requiring reporting of all transactions, including Federal cash, Federal expenditures and unobligated balance, recipient share, and program income. The final SF-425 is due within 90 days after the end of the project performance period, but may be submitted as soon as all outstanding expenditures have been completed. The Grantee must be able to support the information contained in its financial reports and shall ensure

that data included in the report is accurate and consistent.

#### **16. Interim and Final Performance Reports:**

If required by the Statement of Work, the Grantee shall submit interim reports at the intervals specified in the Statement of Work. The Grantee must submit a Final Performance Report via email to the FRA Grant Manager when the Project(s) funded through this Agreement are completed. All closeout activities, including submission and review of Reports, must be completed no later than 90 days after the end of the Project performance period for this Agreement or FRA termination date.

#### **17. Project Completion and Closeout:**

- a. **Final Documentation.** As soon as the funded Project(s) are complete, the Grantee shall submit a final SF-425, a final Progress Report, a final Performance Report, and a final payment request. Closeout activities, including submission of the referenced documents, must be completed no later than 90 days after the end of the Project performance period for this Agreement or FRA termination date.
- b. **Excess Payments.** If FRA has made payments to the Grantee in excess of the total amount of FRA funding due, the Grantee shall promptly remit that excess and interest as may be required by paragraph 19 f. of this Attachment.
- c. **Closeout.** Grantees should begin closeout procedures when their Project(s) is complete. Project closeout is complete when all required Project work and all administrative procedures described in 2 C.F.R. Part 200 (all sections), as applicable, have been completed, and when FRA notifies the Grantee of closeout and forwards the final Federal assistance payment or when FRA acknowledges the Grantee's remittance of a proper refund. Project closeout shall not invalidate any continuing obligations imposed on the Grantee by this Agreement or by the FRA's final notification or acknowledgment.

#### **18. Transparency Act Requirements—Reporting Subawards and Executive Compensation:**

The Grantee shall comply with the provisions of the Federal Funding Transparency and Accountability Act of 2006 (Pub. L. 109-282) and 2 C.F.R § 170, incorporated herein by reference and made part hereof. For more information, visit <https://www.fsrs.gov/>.

#### ***Financial Management Provisions***

#### **19. Payments:**

- a. **Request by the Grantee for Payment.** The Grantee's request for payment of the Federal share of allowable costs shall be made to FRA and will be acted upon by FRA as set forth in this section. For states, payments are governed by Treasury/State CMIA

agreements, and default procedures codified at 31 C.F.R. Part 205 “Rules and Procedures for Efficient Federal-State Funds Transfers” and TFM 4A-2000 Overall Disbursing Rules for All Federal Agencies. Non-states must comply with the provisions of 2 C.F.R. §200.305(b). To receive a Federal assistance payment, the Grantee must:

- 1) Have demonstrated or certified that it has made a binding commitment of non-Federal funds, if applicable, adequate when combined with Federal payments, to cover all costs to be incurred under the Project to date. A Grantee required by Federal statute or this Agreement to provide contributory matching funds or a cost share agrees:
    - to refrain from requesting or obtaining Federal funds in excess of the amount justified by the contributory matching funds or cost share that has been provided; and
    - to refrain from taking any action that would cause the proportion of Federal funds made available to the Project at any time to exceed the percentage authorized under this Agreement. The phasing or expenditure rate of contributory matching funds or cost share may be temporarily adjusted only to the extent expressly provided in writing by an Authorized Representative of FRA, and may not modify the agreed-upon matching funds requirement set forth in this Agreement.
  - 2) Have submitted to FRA all financial and progress reports required to date under this Agreement; and
  - 3) Have identified the source(s) of financial assistance provided under this Project, if applicable, from which the payment is to be derived.
- b. Reimbursement Payment by FRA. FRA will disburse funds to the Grantee on a reimbursable basis, whereby the Grantee will be reimbursed for actual expenses incurred, after the submission of complete and accurate invoices. The Grantee’s request for payment shall be made to FRA through the Department of Transportation’s Delphi eInvoicing System and will be acted upon as set forth in this section.
- 1) Delphi eInvoicing System first-time users must obtain access to the System, by contacting the Financial Analyst, listed on the Agreement cover sheet. Additional information on the System can be found at [www.dot.gov/cfo/delphi-einvoicing-system.html](http://www.dot.gov/cfo/delphi-einvoicing-system.html).
  - 2) Upon receipt of a payment request and adequate accompanying information (invoices in accordance with applicable cost principles), FRA will authorize payment by direct deposit, provided the Grantee: (i) is complying with its obligations under this Agreement, (ii) has satisfied FRA that it needs the requested Federal funds for the period covered by the payment request (as identified on the

Standard Form 270 Request for Advance or Reimbursement (SF-270)), and (iii) is making adequate and timely progress toward Project completion. If all these circumstances are present, FRA may reimburse allowable costs incurred by the Grantee up to the maximum amount of FRA's share of the total Project funding.

The Grantee agrees to give a written, five-day notice to the assigned FRA Grant Manager for any payment request totaling \$50 million or more. Grantees should note that FRA is unable to process single payment requests greater than \$99,999,999. The Grantee agrees to adhere to and impose upon its subrecipients all applicable foregoing "Reimbursement Payment by FRA" requirements of this Agreement.

If the Grantee fails to adhere to the foregoing "Reimbursement Payment by FRA" requirements of this Agreement, FRA may withhold funding disbursements.

- c. Allowable Costs. FRA will reimburse the Grantee's expenditures only if they meet all of these requirements:
  - 1) Conform to the Project description, the Statement of Work, the Approved Project Budget, and all other terms of this Agreement;
  - 2) Be necessary in order to accomplish the Project;
  - 3) Be reasonable for the goods or services purchased;
  - 4) Be actual net costs to the Grantee (i.e., the price paid minus any refunds, rebates, or other items of value received by the Grantee that have the effect of reducing the cost actually incurred);
  - 5) Be incurred (and be for work performed) after the effective date of this Agreement and prior to the end date of the Agreement, unless specific authorization from FRA to the contrary is received in writing;
  - 6) Unless permitted otherwise by Federal status or regulation, conform to Federal guidelines or regulations and Federal cost principles, as set forth in 2 C.F.R. Subpart E § 200.400 – 200.475.
  - 7) Be satisfactorily documented; and
  - 8) Be treated uniformly and consistently under accounting principles and procedures approved and prescribed by FRA for the Grantee, and those approved or prescribed by the Grantee for its subrecipients and contractors.
- d. Disallowed Costs. In determining the amount of Federal assistance, FRA will exclude:

- 1) Any Project costs incurred by the Grantee before the obligation date of this Agreement, or amendment or modification thereof (whichever is later), unless specifically allowed by this Agreement, otherwise permitted by Federal law or regulation, or unless the FRA Financial Analyst states in writing to the contrary;
- 2) Any costs incurred by the Grantee that are not included in the latest Approved Project Budget; and
- 3) Any costs attributable to goods or services received under a contract or other arrangement that is required to be, but has not been, concurred in or approved in writing by FRA.

The Grantee agrees that reimbursement of any cost under this paragraph does not constitute a final FRA decision about the allowability of that cost and does not constitute a waiver of any violation by the Grantee of the terms of this Agreement. The Grantee understands that FRA will not make a final determination about the allowability of any cost until an audit of the Project has been completed. If FRA determines that the Grantee is not entitled to receive any part of the Federal funds requested, FRA will notify the Grantee stating the reasons therefor. Project closeout will not alter the Grantee's obligation to return any funds due to FRA as a result of later refunds, corrections, or other transactions. Project closeout will not alter FRA's right to disallow costs and recover funds on the basis of a later audit or other review. Unless prohibited by law, FRA may offset any Federal assistance funds to be made available under this Agreement, as needed, to satisfy any outstanding monetary claims that the Federal Government may have against the Grantee. Exceptions pertaining to disallowed costs will be assessed based on their applicability, as set forth in the applicable Federal cost principles or other written Federal guidance.

- e. Bond Interest and Other Financing Costs. To the extent permitted in writing by FRA and consistent with 2 C.F.R. § 200.449, bond interest and other financing costs are allowable.
- f. Requirement to Remit Interest. The Grantee agrees that any interest earned by the Grantee on FRA funds must be handled in accordance with 2 C.F.R. § 200.305, and remittance back to the Government must be made in accordance with the provisions thereof.

## **20. Accounting Procedures:**

- a. Project Accounts. The Grantee shall establish and maintain for the Project either a separate set of accounts or accounts within the framework of an established accounting system, in a manner consistent with 2 C.F.R. §§ 200.302, 200.303 and 200.305.

- b. Funds Received or Made Available for the Project. Non-Federal grantees other than states shall follow the provisions of 2 C.F.R. § 200.305(b)(7) with respect to the use of banks and other institutions as depositories of any advance payments that may be received under this Agreement. States shall follow the provisions of 2 C.F.R. § 200.305(a).
- c. Documentation of Project Costs and Program Income. All costs charged to the Project, including any approved services contributed by the Grantee or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. The Grantee shall also maintain accurate records of all Program Income derived from Project implementation.
- d. Checks, Orders, and Vouchers. The Grantee shall ensure that all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Project are clearly identified with a Grant Agreement number, readily accessible, and, to the extent feasible, kept separate from documents not pertaining to the Project.

## **21. Program Income:**

The Grantee is encouraged to earn income to defray Project costs, where appropriate, and should work with the assigned FRA Grant Manager to determine how this income may be applied to the grant, in accordance with 2 C.F.R. § 200.307. Program income not deducted from total allowable costs may be used only for the purposes and under the conditions established in this Agreement.

## ***Project Management Provisions***

## **22. Environmental Protection:**

- a. Grantee Assistance. Grantees must comply with the governance referenced in Section 41 (c) of this Agreement and may also be required to assist with FRA's compliance with applicable Federal laws, regulations, executive orders, and policies related to environmental review under the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 et seq., and related laws and regulations and historic preservation under the National Historic Preservation Act (NHPA), 16 U.S.C. § 470, and other related laws and regulations. In providing such assistance, FRA may require that the Grantee conduct environmental and/or historic preservation analyses and to submit documentation to FRA.
- b. Timing of Grantee Action. If this Agreement funds environmental reviews under NEPA, the Grantee may not expend any of the funds provided in this Agreement on construction or other activities that represent an irretrievable commitment of

resources to a particular course of action affecting the environment until FRA has provided the Grantee with a written notice authorizing the Grantee to proceed.

- c. **Minimization, Avoidance and Mitigation Measures.** The Grantee must implement all measures to minimize, avoid, or mitigate adverse environmental impacts identified by FRA in the categorical exclusion, Finding of No Significant Impact, or Record of Decision completed for the Project. The Grantee must also implement any additional measures identified through all other environmental or historic preservation review processes conducted to support Project construction and operation (e.g. any commitments included in a Memorandum of Agreement executed pursuant to Section 106 of the NHPA).
- d. **Revisions to Minimization, Avoidance or Mitigation Measures.** The Grantee must provide FRA with written notice if it has not, or cannot, implement any of the minimization, avoidance or mitigation measures identified in subsection c. FRA may take the appropriate corrective action upon receiving such notice, including identifying substitute mitigation measures or otherwise revising its categorical exclusion, Finding of No Significant Impact, or Record of Decision.

### **23. Property, Equipment and Supplies:**

Unless otherwise approved by FRA, the following conditions apply to property, equipment, and supplies funded under this Agreement:

- a. **Use of Property, Equipment and Supplies.** The Grantee shall use Project real property, as defined by 2 C.F.R. § 200.85, in accordance with the Property Standards of 2 C.F.R. § 200.211.
- b. **General Federal Requirements.** The Grantee will comply with the property management standards of 2 C.F.R. §§ 200.310 through 200.316, including any amendments thereto, and other applicable guidelines or regulations that are issued. Exceptions to the requirement must be specifically approved by FRA in writing.
- c. **Maintenance.** The Grantee agrees to maintain the Project property and equipment in good operating order, and in accordance with any guidelines, directives, or regulations that FRA may issue.
- d. **Records.** The Grantee agrees to keep satisfactory records with regard to the use of the property, equipment, and supplies, and submit to FRA, upon request, such information as may be required to assure compliance with this section of this Agreement.
- e. **Transfer of Project Property, Equipment or Supplies.** The Grantee agrees that FRA may require the Grantee to transfer title to, or direct the disposition of, any property, equipment, or supplies financed with FRA assistance made available by this Agreement, as required by 2 C.F.R. §§ 200.311 – 200.316.
- f. **Withdrawn Property, Equipment or Supplies.** If any Project property,

equipment, or supplies are not used for the Project for the duration of their useful lives, as determined by FRA, whether by planned withdrawal, misuse or casualty loss, the Grantee agrees to notify FRA immediately. Disposition of withdrawn property, equipment, or supplies shall be in accordance with 2 C.F.R. §§ 200.311 – 200.316.

- g. Encumbrance of Project Property or Equipment. Unless expressly authorized in writing by FRA, the Grantee agrees not to:
  - 1) Execute any transfer of title, lease, lien, pledge, mortgage, encumbrance, contract, grant anticipation note, alienation, or other obligation that in any way would dispose of or encumber the Grantee's title or other interest in any Project property or equipment; or
  - 2) Obligate itself in any manner to any third party with respect to Project property or equipment. The Grantee shall refrain from taking any action or acting in a manner that would adversely affect FRA's interest or impair the Grantee's continuing control over the use of Project property or equipment.

#### **24. Relocation and Land Acquisition:**

The Grantee agrees to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 et seq. and U.S.DOT regulations, Uniform Relocation and Real Property Acquisition for Federal and Federally Assisted Programs, 49 C.F.R. Part 24.

#### **25. Flood Hazards:**

The Grantee agrees to comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4012a(a), with respect to any construction or acquisition Project.

#### **26. Procurement:**

- a. Federal Standards. The Grantee may acquire a variety of goods or services in connection the Project. The Grantee, if a State, shall use its own procurement procedures that reflect applicable state laws and regulations, as long as the Grantee conforms to 2 C.F.R. § 200.317. If the Grantee is not a State, it shall comply with 2 C.F.R. §§ 200.318 – 200.326, and applicable supplementary U.S. DOT or FRA directives or regulations. If determined necessary for proper Project administration, FRA reserves the right to review the Grantee's technical specifications and requirements.
- b. Cargo Preference -- Use of United States-Flag Vessels. Pursuant to U.S. DOT, Maritime Administration regulations, "Cargo Preference -- U.S.-Flag Vessels," 46 C.F.R. Part 381, the Grantee shall insert the following clauses in contracts let by the Grantee in which equipment, materials or commodities may be transported by ocean

vessel in carrying out the Project. As required by 46 C.F.R. Part 381, the contractor agrees -

- 1) To utilize privately owned United States-flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this contract to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
  - 2) To furnish within 20 days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (1) above to the recipient (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of Cargo Preference and Domestic Trade, Maritime Administration, 1200 New Jersey Avenue, SE, Washington, D.C. 20590, marked with appropriate identification of the Project.
  - 3) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.
- c. Notification Requirement. With respect to any procurement for goods and services (including construction services) having an aggregate value of \$500,000 or more, the Grantee agrees to:
- 1) specify in any announcement of the awarding of the contract for such goods or services the amount of Federal funds that will be used to finance the acquisition; and
  - 2) express said amount as a percentage of the total costs of the planned acquisition.
- d. Debarment and Suspension; and Drug-Free Work Place. The Grantee agrees to obtain certifications on debarment and suspension from its third party contractors and subrecipients and otherwise comply with U.S. DOT regulations, Nonprocurement Suspension and Debarment, 2 C.F.R. Part 1200, and Government-wide Requirements for Drug-Free Workplace (Grants), 49 C.F.R. Part 32.
- e. Participation by Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals.
- 1) The Grantee agrees to: (a) provide maximum practicable opportunities for small businesses, including veteran-owned small businesses and service disabled veteran-owned small businesses, and (b) implement best practices, consistent with our nation's civil rights and equal opportunity laws, for ensuring

that all individuals – regardless of race, gender, age, disability, and national origin – benefit from activities funded through this Agreement.

- 2) An example of a best practice under (b) above would be to incorporate key elements of the Department's Disadvantage Business Enterprise (DBE) program (see 49 C.F.R. Part 26) in contracts under this Agreement. This practice would involve setting a DBE contract goal on contracts funded under this Agreement that have subcontracting possibilities. The goal would reflect the amount of DBE participation on the contract that the Grantee would expect to obtain absent the effects of discrimination and consistent with the availability of certified DBE firms to perform work under the contract. When a DBE contract goal has been established by a Grantee, the contract would be awarded only to a bidder/offer that has met or made (or in the case of a design/build project, is committed to meeting or making) documented, good faith efforts to reach the goal. Good faith efforts are defined as efforts to achieve a DBE goal or other requirement of this Agreement which, by their scope, intensity, and appropriateness to the objective can reasonably be expected to achieve the goal or other requirement.
- 3) The Grantee must provide FRA a plan, using guidance provided by FRA, for incorporating the above best practice into its implementation of the Project within 60 days following execution of this Agreement. If the Grantee is not able to substantially incorporate Part 26 elements, in accordance with the above-described best practice, the Grantee agrees to provide the FRA with a written explanation and an alternative program for ensuring the use of contractors owned and controlled by socially and economically disadvantaged individuals.

## **27. Rights in Intangible Property:**

- a. Definition. The term "intangible property", as defined in 2 C.F.R. § 200.59, means property having no physical existence, such as trademarks, copyrights, patents and patent applications and property, such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership (whether the property is tangible or intangible).
- b. Title to Intangible Property. Intangible property acquired in the performance of this Agreement vests upon acquisition in the Grantee. The Grantee must use that property for the originally-authorized purpose, and must not encumber the property without approval of FRA. When no longer needed for the originally-authorized purpose, disposition of the intangible property must occur in accordance with the provisions of 2 C.F.R. § 200.313(e).
- c. Copyright. The Grantee may copyright any work that is subject to copyright and was developed or for which ownership was acquired under this Agreement. FRA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

d. Patents. The following provisions will apply to patents under this Agreement:

- 1) The Grantee is subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements".
- 2) If the Grantee secures a patent with respect to any invention, improvement, or discovery of the Grantee or any of its subrecipients or contractors conceived or first actually reduced to practice in the course of or under this Project, the Grantee agrees to grant to FRA a royalty-free, nonexclusive, and irrevocable license to use and to authorize others to use the patented device or process for Federal Government purposes.

e. Data Rights. FRA has the right to:

- 1) Obtain, reproduce, publish, or otherwise use the data produced under this Agreement; and
- 2) Authorize others to receive reproduce, publish, or otherwise use such data for Federal Government purposes.

f. Freedom of Information Act (FOIA). Responding to a FOIA request under this Agreement will be handled in accordance with the provisions of 2 C.F.R. § 200.315(e), including any definitional provisions set forth therein. The "Federal awarding agency" is FRA, and the "non-Federal entity" is the Grantee for purposes of this clause.

## **28. Acknowledgment of Support and Disclaimer:**

a. Acknowledgement and Disclaimer. An acknowledgment of FRA support and a disclaimer of said must appear in any Grantee publication developed under a research and development grant, or any other product as directed by FRA, whether copyrighted or not, based on or developed under the Agreement, in the following terms:

- 2) "This material is based upon work supported by the Federal Railroad Administration under [Grant/Cooperative Agreement number], [date of award]."
- 3) "Any opinions, findings, and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the view of the Federal Railroad Administration and/or U.S. DOT."

b. Signs. The Grantee is encouraged to erect at the site of any construction, and to

maintain during construction, signs identifying the Project and indicating that FRA is participating in the development of the Project.

### **29. Reprints of Publications:**

At such time as any article resulting from work under this Agreement is published in a scientific, technical, or professional journal or publication, two reprints of the publication should be sent to the FRA Grant Manager, clearly referenced with the appropriate identifying information.

### ***Documentation and Oversight Provisions***

### **30. Record Retention:**

During the course of the Project and for three years after submission of the final Federal Financial Report (SF-425), the Grantee agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to the Project as FRA may require. In cases where litigation, a claim, or an audit is initiated prior to the expiration of the three-year period, records must be retained until completion of the action and resolution of issues or the end of the three-year period, whichever is later. Reporting and record-keeping requirements are set forth in 2 C.F.R. §§ 200.333 – 200.337. Project closeout does not alter these requirements.

### **31. Audit and Inspection.**

- a. General Audit Requirements. The Grantee will comply with all audit requirements of 2 C.F.R. §§ 200.500 – 200.512.
- b. Inspection by Federal Officials. The Grantee agrees to permit the Secretary and the Comptroller General of the United States, or their Authorized Representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Grantee and its contractors and subrecipients pertaining to the Project.

### **32. Fraud, Waste or Abuse:**

The Grantee agrees to take all steps, including initiating litigation, if necessary, to recover Federal funds if the FRA determines, after consultation with the Grantee, that such funds have been spent fraudulently, wastefully, or in violation of Federal laws, or misused in any manner in undertaking the Project. For the purposes of this Agreement, the term “Federal funds” means funds however used or disbursed by the Grantee that were originally paid pursuant to this Agreement.

### **33. Site Visits:**

FRA, through its Authorized Representatives, has the right, at all reasonable times, to make site visits to review Project activities, accomplishments, and management control systems and to provide such technical assistance as may be required. If any site visit is made by FRA on the premises of the Grantee or subrecipient under this Agreement, the Grantee shall provide, and shall require its subrecipients to provide, all reasonable facilities and assistance for the safety and convenience of FRA representatives in the performance of their duties. All site visits and evaluations shall be performed in such a manner as will not unduly delay work being conducted by the Grantee or any subrecipient.

#### **34. Safety Compliance:**

To the extent applicable, the Grantee agrees to comply with any Federal regulations, laws, or policy and other guidance that FRA or U.S. DOT may issue pertaining to safety in general, and in the performance of this Agreement, in particular.

#### ***Other Legislative and Regulatory Provisions***

#### **35. Buy America/Buy American:**

The Grantee's acquisition of steel, iron and manufactured goods with funding provided through this Agreement is subject to Buy America or Buy American requirements depending on the source of the funding for the funded Project.

The Grantee understands that one or both of the following clauses may apply to the Project. The Grantee must confirm the applicable clause(s) with the Grant Manager prior to purchasing steel, iron or manufactured goods under this Agreement:

- a. Buy America. The Grantee shall comply with the Buy America provisions set forth in 49 U.S.C. §24405(a) for the Project requiring the use of steel, iron, and manufactured goods produced in the United States, in accordance with the conditions therein set forth.
- b. Buy American. The Grantee shall comply with the Buy American provisions set forth in the Buy American Act, 41 U.S.C. §§ 8301-8305. The Grantee also represents that it has never been convicted of violating the Buy American Act nor will it make funding received under this Agreement available to any person or entity who has been convicted of violating the Buy American Act.

Additional guidance on compliance with the Buy America and Buy American requirements is found on the FRA's internet page at:  
<http://www.fra.dot.gov/Page/P0185>.

#### **36. Ethics:**

- a. **Standards of Conduct.** The Grantee shall maintain a written code or standards of conduct governing the performance of its officers, employees, board members, or agents engaged in the award and administration of contracts or agreements supported by Federal funds provided through this Agreement. The code or standards shall provide that the Grantee's officers, employees, board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from present or potential subrecipients or contractors. The Grantee may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. As permitted by State or local law or regulations, such code or standards shall provide for penalties, sanctions, or other disciplinary actions for violations by the Grantee's officers, employees, board members, or agents, or by subrecipients or their agents.
- 1) **Personal Conflict of Interest.** The Grantee's code or standards must provide that no employee, officer, board member, or agent of the Grantee may participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the parties set forth below has a financial or other interest in the firm selected for award:
- The employee, officer, board member, or agent;
  - Any member of his or her immediate family;
  - His or her business partner; or
  - An organization that employs, or is about to employ, any of the above.
- 2) **Organizational Conflicts of Interest.** The Grantee's code or standards of conduct must include procedures for identifying and preventing real and apparent organizational conflicts of interests. An organizational conflict of interest exists when the nature of the work to be performed under a proposed contract, may, without some restrictions on future activities, result in an unfair competitive advantage to the contractor or impair the contractor's objectivity in performing the contract work.
- b. **Existing Codes or Standards.** This section does not require the Grantee to implement a new code or standards of conduct where a State statute, or written code or standards of conduct, already effectively covers all of the elements of a.

### **37. Civil Rights:**

The Grantee agrees to comply with all civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that the FRA determines otherwise in writing. These include, but are not limited to, the following: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) (as implemented by 49 C.F.R. Part 21), which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681- 1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits

discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 1601-1607), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing, (i) 49 U.S.C. § 306, which prohibits discrimination on the basis of race, color, national origin, or sex in railroad financial assistance programs; (j) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance was made; and (k) the requirements of any other nondiscrimination statute(s) which may apply to the Grantee.

### **38. Americans With Disabilities Act:**

The Grantee agrees to utilize funds provided under this Agreement in a manner consistent with the requirements of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. § 12101 et seq.).

### **39. SAM Registration and DUNS Number:**

The Grantee is responsible for maintaining an active System for Award Management (SAM) Registration and Data Universal Numbering System (DUNS) Number and ensuring that all SAM/DUNS information is current throughout the lifecycle of this Agreement, in accordance with 2 C.F.R. § 25.200(a)(2). If SAM/DUNS information becomes inactive, expired, or incorrect, the Grantee shall not be able to do any grant-related business with FRA, including the obligation and/or payment of Federal grant funds, and FRA may take appropriate action to terminate this Agreement, in accordance with the terms of this Agreement.

### **40. Freedom of Information Act:**

The FRA is subject to the Freedom of Information Act (FOIA). The Grantees should, therefore, be aware that all applications and related materials submitted by the Grantee related to this Agreement will become agency records and thus are subject to FOIA and to public release through individual FOIA requests.

### **41. Text Messaging While Driving:**

The Grantee is encouraged to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies that bar text messaging while driving company-owned or –rented vehicles, or government-owned, leased, or rented vehicles or privately-owned vehicles when on official government business or when performing any work for or on behalf of the Government. See Executive Order 13513 “Federal Leadership on Reducing Text Messaging While Driving,” Oct. 1, 2009

(available at <http://www.gpo.gov/fdsys/pkg/FR-2009-10-06/pdf/E9-24203.pdf>) and DOT Order 3902.10 “Text Messaging While Driving,” Dec. 30, 2009, as implemented by Financial Assistance Policy Letter (No. FAP- 2010-01, Feb. 2, 2010, available at [http://www.dot.gov/sites/dot.dev/files/docs/FAPL\\_2010-01.pdf](http://www.dot.gov/sites/dot.dev/files/docs/FAPL_2010-01.pdf). This includes, but is not limited to, the Grantee:

- considering new rules and programs or re-evaluating existing programs to prohibit text messaging while driving;
- conducting education, awareness, and other outreach for employees about the safety risks associated with texting while driving; and
- encouraging voluntary compliance with the agency’s text messaging policy while off duty.

The Grantee is encouraged to insert the substance of this clause in all assistance awards.

Where a Grantee is located within a State that already has enacted legislation regarding texting while driving, that State’s law controls and the requirements of this section will not apply to or be a part of this Agreement.

## SECTION IV. GOVERNANCE

### 42. Governing Laws and Regulations:

- a. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The Grantee acknowledges and agrees that its performance shall be governed by and in compliance with 2 C.F.R. §§ 200 – 200.521, including Appendices I – XI and DOT's implementing regulations at 2 C.F.R. part 1201.
- b. Application of Federal, State, and Local Laws and Regulations.
  - 1) Federal Laws and Regulations. The Grantee understands that Federal laws, regulations, policies, and related administrative practices in place on the date this Agreement was executed may be modified from time to time. The Grantee agrees that the most recent of such Federal requirements will govern the administration of this Agreement at any particular time, except if there is sufficient evidence in this Agreement of a contrary intent. Likewise, new Federal laws, regulations, policies and administrative practices may be established after the date the Agreement has been executed and may apply to this Agreement. To achieve compliance with changing Federal requirements, the Grantee agrees to include in all subawards and contracts financed with FRA assistance under this Agreement, specific notice that Federal requirements may change and the changed requirements will apply to the Project, as required. All limits or standards set forth in this Agreement to be observed in the performance of the Project are minimum requirements.
  - 2) State or Territorial Law and Local Law. Except to the extent that a statute or regulation preempts State or territorial law, nothing in this Agreement shall require the Grantee to observe or enforce compliance with any provision thereof, perform any other act, or do any other thing in contravention of any applicable State or territorial law; however, if any of the provisions of this Agreement violate any applicable State or territorial law, or if compliance with the provisions of this Agreement would require the Grantee to violate any applicable State or territorial law, the Grantee agrees to notify the FRA immediately in writing in order that FRA and the Grantee may make appropriate arrangements to proceed with the Project as soon as possible.
- c. Environmental Protection. The Grantee will ensure that all work conducted under this Agreement complies with applicable laws, regulations, executive orders, and policies related to environmental protection and historic preservation, including, but not limited to, the National Environmental Policy Act (NEPA) (42 U.S.C. 4332)(NEPA) and its implementing regulations (40 C.F.R. Part 1500 et seq.), FRA's "Procedures for Considering Environmental Impacts" (45 Fed. Reg. 40854, June 16, 1980), as revised May 26, 1999, 64 Fed. Reg. 28545), Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470(f)) and its implementing regulations (36 C.F.R. Part 800), Executive Order No. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income

Populations, Section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. § 303(c)), Section 114 of the Clean Air Act (42 U.S.C. 7414), and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1318).